

CHILDREN'S HEALTH AND ENVIRONMENT COMMITTEE

DATE: February 24, 2005

CALLED TO ORDER: 5:33 p.m.

ADJOURNED: 7:49 p.m.

ATTENDANCE

ATTENDING MEMBERS

Angela Mansfield, Chair
Greg Bowes
James Bradford
Susie Day
Scott Keller
William Oliver
Steve Talley

ABSENT MEMBERS

AGENDA

THE SCIENCE OF SECONDHAND SMOKE - presentation by Dr. Andrew Hyland,
Rockville Park Cancer Institute

PRESENTATION - Charleta B. Tavares; Columbus, Ohio Councilwoman

PROPOSAL NO. 45, 2005 - amends the Code by establishing nonsmoking areas
"Postpone" until March 10, 2005 Vote: 7-0

CHILDREN'S HEALTH & ENVIRONMENT COMMITTEE

The Children's Health and Environment Committee of the City-County Council met on Thursday, February 24, 2005. Chair Angela Mansfield called the meeting to order at 5:33 p.m. with the following members present: Greg Bowes, James Bradford, Susie Day, Scott Keller, William Oliver, and Steve Talley.

Chair Mansfield stated that the Children's Health and Environment Committee was established by the President of the Council to address a number of issues. She said that other issues the Committee may look at in the future include lead poisoning, rental housing, and juvenile programs to help prevent young people from ending up in the Department of Corrections. She said that the smoke-free air issue is very important and elicits many different opinions about what should ultimately be passed into law. She said that in light of this, several meetings will be conducted where the different viewpoints and positions, along with evidence to support them, will be shared. She said tonight's meeting will present some scientific evidence, and the second meeting, scheduled for March 10, 2005, will feature presentations from individuals from establishments in the community such as The Slippery Noodle and Nicky Blaine's, as well as John Livengood of Livengood & Associates, who represents many of the restaurants and bars. Chair Mansfield said that in way of a brief introduction, she is the elected Councillor for District 2 and has been selected to chair this new Committee. Councillor Bowes, District 7, will serve as the vice-chair for the Committee.

THE SCIENCE OF SECONDHAND SMOKE - presentation by Andrew Hyland

Chair Mansfield introduced Dr. Andrew Hyland, a scientist who has worked extensively in the area of smoke-free air, and has served as a resource and helped cities both before and after the enactment of a smoke-free ordinance.

Dr. Hyland thanked the Committee for the invitation to come and share the findings of the research he has done for the last ten years in this area. Dr. Hyland is an epidemiologist in the Department of Health Behavior at Rockville Park Cancer Institute, which is the oldest cancer institute in the country. One-third of the patients that come into their hospital are there because of tobacco use, and his main job is to study the effects of tobacco use and find ways to reduce the morbidity and mortality associated with it. Dr. Hyland presented a slide show presentation entitled "Give Me Breathing Room." [Clerk's Note: A full print-out of this presentation is on file in the Council office with the original minutes of this meeting.]

Dr. Hyland said that smoke-free rules are needed because they clean up the air and promote healthier individuals. He said that second-hand smoke is the cause of lung

cancer, heart disease, and other respiratory ailments. A smoke-free ordinance is one of the best ways to combat these illnesses. An unintended consequence of smoke-free rules is that they help smokers quit. He said that approximately a third of all lung cancers in non-smokers are attributable to second-hand smoke according to the Center for Disease Control (CDC). The CDC also has estimated that approximately 40,000 people die each year of heart disease that is attributed to second-hand smoke. He referred to the case of Helena, Montana, which passed smoke-free regulations in June of 2002. Six months later, these regulations were rescinded due to legal challenges. He referred to a bar graph showing the significant decrease of hospital admissions for heart attack during this six-month period when the regulations were in place, and the subsequent increase to former rates after the regulations were rescinded. He said that it is proven that second-hand smoke is a toxin which causes lung cancer and heart disease, and nearly all people are exposed to second-hand smoke, making this a very important public health problem. Policies restricting smoking in public places reduce exposure to second-hand smoke, and he will address evidence to support that. He stated that he will also address the main arguments against smoke-free regulations, which are: loss of revenue for the hospitality industry, freedom of choice and smokers' rights, governments deciding how business owners should run their businesses, and the enforceability of the law.

Dr. Hyland said that cotinine is a metabolized nicotine, and when smoke is breathed into the body, cotinine levels can be measured to mark exposure to smoke. He referred to a graph showing levels of cotinine found in smokers and non-smokers, and noted that the non-smokers' exposure and levels of cotinine never go to zero. This data indicates that over 90% of the population have been exposed to measurable levels of cotinine and harmful smoke. He said that smoking restrictions in the workplace began over 20 years ago. Tobacco companies took the position that companies preferred to "encourage individual workers to settle smoking issues with mutual respect for each others' legitimate rights and feelings." The public relations arm for the tobacco industry began in 1986 with the Tobacco Institute (which was disbanded in 1998) to try and discredit some of the emerging scientific evidence to support the idea that second-hand smoke causes disease. Dr. Hyland said that the idea of smoke-free workplaces produces contentious debate with a lot of differing opinions, but the ultimate goal is to provide workers with a safe and healthy working environment. There are almost 2,000 jurisdictions in the United States that have adopted some sort of smoke-free worksite regulations, with a 14% increase just in the past year. The strongest increases have been in the number of communities adopting comprehensive smoke-free regulations, including bars. If some think these regulations are extreme, Bhutan, which borders Nepal in the Himalayan mountains, actually made smoking illegal in November, 2004. Currently there are 10 states that have smoke-free restaurants, bars and public places, which covers 35% of the population. He said that Ireland became the first country to go smoke-free in March 2004, with Norway and Cuba following suit, and others such as Sweden, Scotland, the United Kingdom, and New Zealand now debating such regulations. Dr. Hyland said that these increases in smoke-free regulations have resulted in a decrease of cotinine levels in non-smokers over the past five years.

Dr. Hyland said that he helped the state of New York, where he spent most of his life, with their Clean Indoor Air Amendment, which became effective July 24, 2003. This act requires all indoor public places, including bars and restaurants, to be smoke-free. He said that real-time air samplers were used to measure air quality and register fine particles less than 2.5 microns ($PM_{2.5}$), which are invisible to the human eye and easily inhaled deep into the lungs, to see if the pollution levels actually went down after the regulations became effective. He said that studies found that levels of indoor air pollution decreased by 93% in 14 bars and restaurants in western New York. Thirteen of those 14 locations tested were completely compliant and smoke-free, and only one was cheating and not in compliance. Dr. Hyland said that the Environmental Protection Agency (EPA) has a ruling that states that an average annual exposure level of 15 $PM_{2.5}$ is dangerous to human health, and some of the levels of these bars and restaurants were at levels of 600 to 1,300 $PM_{2.5}$, which is extremely harmful. Unfortunately, when places go smoke-free, those locations do not zero out, especially in establishments where cooking is going on. He said that other locations, such as pool halls, bingo halls, and bowling alleys, were also tested and found to decrease, as well. Dr. Hyland stated that a study was conducted taking air samples in 61 venues in eight large cities, three with smoke-free bars and restaurants (Buffalo, Los Angeles and New York City) and five cities without smoke-free regulations (Baltimore, Washington D.C., Philadelphia, Hoboken, and Galveston). He said that there was an 83% difference in harmful $PM_{2.5}$ levels in the cities with smoke-free bars, assessed from March to July, 2004. Dr. Hyland stated that another study was conducted in Hartford, Connecticut, with samples taken in restaurants and bars on March 25 and April 23, 2004, before and after a smoking ban was imposed on April 1st. He said that the results were basically the same, with a 75% reduction in indoor air pollution.

Dr. Hyland said that other solutions have been suggested, such as better ventilation or smoking booths. He said that these options do not seem to work. For ventilation to bring levels to an "acceptable" risk, the system would need enough air exchange moving through ventilation systems that would create tornadic-like winds, so this option is not really feasible. Others have suggested waivers to exempt certain establishments where going smoke-free would cause undue economic hardship and where they could present a plan to decrease smoke levels. He said that they measured the air quality in establishments that received a waiver, and the air pollution was more than 10 times what the EPA says is dangerous. He said that some establishments had separately enclosed smoking areas, and it was found that the levels of air pollution in the non-smoking areas of these locations were just as bad as those in bars and restaurants where smoking was on-going. He said that establishment owners also found that they needed more equipment and had higher electric bills to try and maintain smoke-free areas, but the ventilation and extra cost did not address the problem. Dr. Hyland said that another argument against the smoking ban was the threat of economic doom. He said that over 100 studies were conducted to measure the economic effect. Of those 100 studies, 21 used controlled, reliable data in eight countries and over 30 different states or provinces. Not a single one of these 21 studies concluded that smoke-free

laws were bad for business. The only studies that concluded that smoke-free laws were bad for business were conducted or paid for by the tobacco industries. About one percent of the population of New York works in a restaurant, and percentages in employment cycles changed very minimally after the ban, and did not decrease any more from month to month than it did before the law was enacted. Therefore, the decreases probably were not attributable to the smoke-free law. He said that people are actually shocked to learn that there are actually more bars now in New York after the law than there were before the law. He said that although employment in stand-alone bars has gone down slightly, there are actually more liquor licenses being issued. He said that the increase has been about 3.5%, with an addition of approximately 500 bars in the state. He added that alcohol excise tax collections have actually increased and not decreased, as was predicted after the passage of the smoke-free law.

Dr. Hyland stated that there were concerns that compliance with the new law would be low, but that did not happen in New York State. He said that there was concern that the restaurant owners would have to become "smoke police," but that has not really happened either, and most people have adapted to the rules, even if they are not happy about them. He said that most people, when reminded by the restaurant or bar staff that smoking is not allowed, are quick to comply. Issues only seem to arise when restaurant or bar owners blatantly choose not to comply and therefore encourage non-compliance in their patrons.

Dr. Hyland said that the largest community-based smoking cessation study that has ever been done in the United States was funded by the National Cancer Institute. A group of 20,000 smokers from 20 communities were identified and tracked over time. In 1993, only a quarter of these smokers reported that their worksite was completely smoke-free, and when surveyed eight years later, that number had tripled. Therefore, the trend seems to be moving toward smoke-free work environments. Also, during this study, they found that these smokers were twice as likely to quit smoking when their workplaces no longer allowed smoking. Even those who continued to smoke began smoking fewer cigarettes when their worksites went smoke-free. Smoke-free work policies seem to have become the norm rather than the exception. The rate of clean air adoption is increasing, and comprehensive smoke-free regulations are the only proven way to protect workers from second-hand smoke. Smoke-free rules clean up the air, improve health, discourage smoking, and increase cessation of smoking, yet have not really devastated the hospitality economies.

Councillor Keller said that he has heard that tobacco smoke has approximately 4,000 gases, and he asked if this is peculiar to tobacco leaf versus other plant materials. Dr. Hyland said that anything that is burnt, even paper or lettuce, will produce chemicals in the air. Hazardous smoke particles are not specific to cigarettes. Councillor Keller said that many life-long Indianapolis residents may remember a meat-packing firm called Stark and Wetzel. Marsha Stark of Indianapolis ran the Tobacco Institute in Washington, D.C. until she got lung cancer from smoking cigarettes. She then spent the last two months of her life remembering and documenting the joking around she had

done regarding the studies that proved smoking was dangerous to one's health. He said that this documentation is very interesting to read.

Councillor Bradford said that this ordinance is a bit different from New York's ordinance, because it is a County ordinance and is not State-wide. He said that this concerns him more than a State-wide ordinance would, because Marion County has already lost businesses to surrounding counties, and a no-smoking ordinance could promote more loss of businesses to connecting counties which do not regulate smoking. He added that the 50-foot language in the proposal is much stricter than the ordinance passed in New York. He said that in looking at the graphs in the presentation, it seemed that only the liquor licenses in New York City increased, as opposed to other counties, and this may be more attributable to the tourism and popularity of the City rather than the smoking ban. He added that Dr. Hyland testified that the studies funded by the tobacco industry might have skewed data, yet in Dr. Hyland's resumé, it seems most of his grant funding comes from the American Cancer Society, and therefore, it might be fair to say that his studies might also be a bit skewed. Dr. Hyland said that his studies have also gone through a Peer Review process and met very strict scientific standards and were published by Peer Review publications. Councillor Bradford stated that they were, however, still funded by the tobacco industry's opposition. Dr. Hyland said that this is correct.

Chair Mansfield said that the standards required for Peer Review require that certain scientific principles have to be followed. Anyone can fund a study, but for it to be accepted by Peer Review and published is another story. Dr. Hyland stated that this is correct and Peer Review studies are held to a very strict, rigorous standard. He said that the National Cancer Institute funds many studies, but there is no control over what studies get published after a rigorous scientific review.

Councillor Bradford stated that he is sure the tobacco industry also hires professional scientists and has high standards for their studies as well. He said that there are definitely people on both sides of this issue, and while the proposal may ultimately pass, he would like to see some changes to the original ordinance to make it more reasonable. He said that he hopes the Committee can come up with something with which Indianapolis residents and businesses can live. He said that he understands the health risks, as his father died from smoking, and he owns a smoke-free restaurant. However, he has a deck behind his restaurant, and he sees no reason his patrons cannot sit out back to eat and smoke if they so wish, since it is not an enclosed space. He said that the current ordinance with its 50-foot restriction would not allow that. He added that the New York State smoking ban is different than a County-wide ban, and he feels Marion County will lose businesses to surrounding counties if this ban is enacted. Dr. Hyland stated that 12 counties in New York had smoke-free restaurant regulations before going State-wide. He said that they conducted surveys, and only about 5% of the population said that they would go outside of the county to dine so that they could smoke. Contrary to that, over one-third of the population said that they would avoid going someplace because smoking was allowed and the environment was unpleasant.

and harmful to their health. He said that some particular venues might suffer, but overall, there does not seem to be much loss in patronage.

Councillor Bowes asked if the grant-funded work Dr. Hyland has done has been accepted by the Peer Review and published. Dr. Hyland said that this is correct. Councillor Bowes asked if the publications are neutral or if they are also funded by one side or the other. Dr. Hyland said that the Peer Review process for getting work published is more rigorous than being awarded grant funding. He said that when an article is submitted to a journal seeking publication, the editors contact experts in that field to review the article on its scientific merits. If the article is not scientifically worthy, it does not get published. He said that most journal funding is subscription and advertising based.

Councillor Oliver stated that tobacco growers, producers, and manufacturers pretty much dominated what was said about cigarettes earlier on and established what was accepted as truth about the links between tobacco use and lung cancer. Many years later, almost all of the studies are showing facts that do not coincide with earlier thoughts and beliefs. He asked about the monitoring device that is used and asked if samples taken in areas where smoking is allowed exceed the EPA standards for air quality. Dr. Hyland said that the EPA indicates that an average of 15 micrograms per cubic meter over the course of a full year is harmful to a person's health. If a person is exposed to high levels only for a day and has no further exposure the rest of the year, this would not meet that threshold. However, if a person is working 20% of their week's hours in a smoking environment, being exposed at levels of 500 to 1,000 micrograms per meter, then this type of exposure would put their health at risk. Councillor Oliver said that a couple of weeks ago, the County issued an air quality alert which detailed the impact of those at risk, and therefore he understands the need to protect citizens from these dangers.

Councillor Bradford said that some of these journals in which Dr. Hyland's studies were published seem to be pretty liberal, and so he is not sure the publishing is as unbiased as presented. He added that the proposal as written here bans smoking on public golf courses. He asked how smoking can be enforced between the 17th and 18th hole on a golf course and asked how enforcement works for New York. He said that as he reads the ordinance, the Sheriff's Department and Police Department write citations, and City Legal and the Prosecutor's Office will follow up on the violations. Councillor Bowes said that the County Prosecutor's Office only prosecutes crimes, and no crime is being created by this ordinance. He said that only the City Prosecutor, who is within the Corporation Counsel's office, would bring these violations through the court system if it was needed. He said that he anticipates that these citations would be similar to traffic tickets, health code violations and zoning violations. All police officers and Sheriff deputies already have the authority to write citations and issue tickets to anyone who commits an ordinance violation under any part of the City Code. He said that there are other inspectors that in the course of their work would have the authority to also issue a violation. Councillor Bradford asked if he is on the golf course, and someone is

smoking a cigarette, who would enforce that. He asked if it would have to be an inspector or officer or if it might be private security personnel. He asked how much the fee would be for a violation, and asked how the issue is enforced in New York. Councillor Bowes said that discussing fees is really for a later discussion when the Committee gets into the meat of the proposal. Dr. Hyland stated that the ban in New York is generally self-enforcing and it is the responsibility of the proprietor in a restaurant to inform the customer that smoking is not allowed. In New York and most other places that have adopted a smoke-free law, the enforcement is done by the Health Department through routine inspections and in response to complaints. He said that usually with the first violation, a letter goes out and it is usually responded to quickly. If there are repeat violations, there are fines assessed. Councillor Bradford asked if the individuals or the business owners are cited. Dr. Hyland said that either can be fined. Councillor Bradford asked if Health Department employees had to be increased to accommodate this change. Dr. Hyland said that there are no additional resources, and they have been able to easily handle it with existing staff and routine inspections. Councillor Bradford asked who is responsible for enforcement in Indianapolis, since the Health Department is separate from City law enforcement personnel. Chair Mansfield said that the Committee will delve into these particulars later in discussions, but this is simply an informational meeting on what other cities are doing.

Chair Mansfield said that she will accept questions from the public as they relate specifically to Dr. Hyland's presentation. She added that there will be several meetings held with full public hearings at different locations in the community, where parking is more accessible, and where more time can be devoted to input from the public.

Melinda Smith, graduate nursing student, asked in light of reliance on revenue from tobacco products, if Dr. Hyland has tracked the decrease in sales of tobacco products in New York. Dr. Hyland said across all states, tobacco consumption is going down, and there are many factors that contribute to that, only one being smoke-free workplaces. He said that it would be hard to quantify how many less cigarettes are being consumed and how much revenue loss as a result is actually due to the smoking ban. He said that he believes the thought that society relies heavily on the sale of tobacco products is a myth for most states. Money spent by smokers in Indiana, New York and Wyoming get exported to North Carolina and Kentucky, and other major tobacco-producing states. If smoking were abolished today, the money spent in Indiana on cigarettes would not disappear, but rather get re-distributed elsewhere on other items.

Jeremy Townsley, adjunct faculty, Psychology Department, Indiana University Purdue University of Indianapolis (IUPUI), asked if the tobacco industry study articles were also subject to an academic Peer Review process or simply an internal publication. He asked if Dr. Hyland could verify the vested interest of the anti-smoking groups versus the tobacco groups. Dr. Hyland said that of the 100 studies they looked at, there were dozens of tobacco industry-affiliated studies, and only one of them was published in a Peer Review journal. The others were internal reports that were issued, and the quality

of the studies were poor, regardless of where they were funded. Dr. Hyland said that with regards to vested interest, he is volunteering his time to be here and does not get a dime out of sharing, and his only motivation is to try and improve public health.

Danny Sparks, a 20-year Department of Public Works employee, asked if health insurance premiums will go down with the passage of a smoke-free law. Dr. Hyland said that they did not research this, and he unfortunately does not have any solid data as evidence, but it is certainly something that should be considered. Mr. Sparks said that his insurance costs go up every year, and he would think such a policy would lower the cost. Chair Mansfield said that hopefully this question can be addressed with individuals from the insurance companies at future meetings. Mr. Sparks asked if incidents of drunk driving also increased since liquor licenses and the number of bars increased due to the smoking ban. Dr. Hyland said that at basically the same time this ban went into effect, the blood alcohol content level was lowered, and it would be very hard to calculate to which event any increase in drunk driving incidents was attributed.

Mark Webb, Indiana Licensed Beverage Association, asked when the amount of excise taxes on alcohol sales slightly increased, if the study differentiated between the type of alcohol purchased, as to whether it was purchased at carry-out places or eat-in places. Dr. Hyland said the data was aggregate sales, and there is no way to separate that out, but the large majority of alcohol excise tax collections in New York come from off-premise sales, such as from supermarkets. Mr. Webb asked if the studies were able to make any correlation with regards to those smokers who were able to quit after the ban, and the amount of smoking they were doing before the ban. Dr. Hyland said that those that quit seemed to be both light and heavy smokers, and many heavy smokers decreased their intake after the ban, even though not quitting completely.

Chair Mansfield thanked Dr. Hyland for volunteering his time to share with the Committee this evening.

PRESENTATION - Charleta B. Tavares; Columbus, Ohio Councilwoman

Chair Mansfield introduced Charleta B. Tavares, Councilwoman from Columbus, Ohio. She said that Columbus is a somewhat comparable city to Indianapolis, and Councilwoman Tavares recently helped to pass a non-smoking ordinance in that city. She said that Councilwoman Tavares has also served as a State Representative with the Ohio General Assembly. Chair Mansfield added that she attended a forum on second-hand smoke at Martin University this morning where Councilwoman Tavares shared, and it was a pleasure to hear Councilwoman Tavares' thoughts and views.

Councilwoman Tavares thanked the Committee for the opportunity to share some of her experiences on adopting a Clean Indoor Air Act in Columbus. She said that the population of Indianapolis and Columbus are very similar, with 750,000 to 780,000 residents in Columbus. While Indianapolis is governed by a City-County Council, Columbus has a smaller City Council. She said that the Council and Mayor of

Columbus believe that the Clean Indoor Air Act is in the best interest of the city's citizens. She said that the government's primary responsibility is to protect the health, safety and welfare of its residents. Councilwoman Tavares chairs the Health, Housing and Human Services Committee for the Columbus City Council and takes her responsibility very seriously. Although the smoke-free ordinance was just adopted in July, 2004, the City and County worked on this issue back in 1993, and the County and City Health Board adopted regulations in 1994. In an attempt to build consensus and develop a compromise, an exemption for bars was created. Subsequently, a lawsuit was filed, and the Environmental Court judge ruled that the Health Board overstepped their bounds and did not have the authority to exempt certain groups or businesses, and the rule was thrown out. Following that, the State Legislature decided that Health Boards could adopt rules for every other category of health except for tobacco. Such rules would need action by the legislative body of that particular community. Then in 2003, Columbus began looking at the issue again. Toledo, Ohio in the northwest quadrant of the state adopted an ordinance that was pretty comprehensive, and a state-wide organization called the Tobacco Use Prevention and Control Foundation wanted to assist other communities in adopting smoke-free ordinances. Columbus received a grant to do outreach and communication to build consensus around a smoke-free city ordinance. The outreach was led by many groups and the coalition was broad-based, made up of tri-chairs represented by the president of the Central Ohio Breathing Association, a physician who had initiated a smoke-free foundation, and a bishop from the Church of God. This coalition led the community forums and took testimony both for and against, and then submitted a proposal to the Health Committee as their best idea of what the City of Columbus should adopt. The proposal included a 50-foot perimeter requirement and made no exemptions for any business in the community. That was the starting point and the draft that was used for public hearings by the Committee.

Councilwoman Tavares stated that the amended ordinance was adopted on July 28, 2004, and testimony was given by over 150 people representing the hospitality industry, tobacco industry, individual businesses, faith community, parents, asthma sufferers, health community, etc. She said that the Committee studied the issue extensively, and of the seven at-large Council members who make up Columbus' City Council, they adopted the ordinance with five members supporting the proposal, one against, and one unable to attend the final vote due to a death in the family. She said that Columbus' ordinance applies to all bars, restaurants, workplaces and public places. She said that the final ordinance did not include the perimeter language and instead only banned smoking near the ingress and egress of a building, windows and ventilation systems. The ordinance makes an exemption for private clubs for members only with no outside sales or outside individuals. These clubs have no workers, have a D-4 non-profit liquor license, and are open to members only. The law was passed on July 28, 2004, and shortly thereafter, the hospitality industry circulated petitions to place a referendum on the November ballot to rescind the law. Sufficient signatures were collected, and the language was placed on the ballot. The smoke-free ordinance was upheld by a 55.6% vote in favor of retaining the law. She said that the Health Department is the lead agency for enforcement, but other entities, such as code enforcement officers and

safety forces, can issue citations. Councilwoman Tavares said that the Health Department has conducted forums and provided information packets since the law was upheld and the implementation date for the ordinance was January 31, 2005. [Clerk's Note: A sample information packet is on file in the Council office with the original minutes of this meeting.]

Councilwoman Tavares said that Columbus' program is a complaint-driven system, and there is a hotline for people to call to report establishments where smoking is taking place. The fine goes against the establishment, and not against the individual smoker. Those who are licensed to do business and must comply with other regulations shoulder the responsibility, and the fine of \$150 per incident is levied against the owner of the establishment. She stated that the majority of the establishments in the community are complying. There is not 100% compliance, and there are some establishments who are openly protesting the ban. She said that an initial complaint results in a letter from the Health Department, and the second complaint is followed by a citation being issued and a fine assessed. She stated that approximately 1,900 cities and towns across the United States have clean indoor air or smoke-free ordinances. She said that the United States needs to be a leader in protecting their citizens and show that they care by setting an example for other countries. The best solution would be to have a state-wide law, but waiting on the state legislature means that more people will suffer and some may die before the residents are protected from this health hazard. Having served as a state legislator, she knows that it is a much more difficult process to get a state-wide law passed. The local body had concerns about being pre-empted by the state legislature, but by being the capital of Ohio and the largest city, they felt they could lead the movement and encourage others to follow their example. In the county of Franklin where Columbus is located, there are 16 municipalities, and approximately seven of those have now moved towards adopting smoke-free legislation to create a level playing field for residents and businesses.

Councilwoman Tavares said that some within the ventilation industry came forward with ideas about how they could clean the air. However, the technology does not exist today to clean carcinogens out of the air. The air can be cleared of the annoying odor or the smoke that burns the eyes, but the carcinogens remain. A spokesperson for the National Association of Heating, Cooling and Ventilation Systems shared that there is no current technology that can actually clear the air of these dangerous particles. She said that until someone comes up with that technology, it is the government's responsibility to protect the health, safety and welfare of its residents in other ways.

Councillor Talley agreed with Councilwoman Tavares that elected officials have the primary responsibility of providing a safe environment for citizens to raise and educate children. He asked if the enforcement agent has to personally witness a violation of the code in order to issue a citation. Councilwoman Tavares said that complaints are usually called into the hotline. Upon the first complaint, a letter is sent, and there is generally compliance after a letter goes out. While there are a few establishments who are blatantly disregarding the law, the overwhelming majority of businesses want to

obey the law. If there are other complaints, a health inspector will visit the establishment. They do not have to witness first-hand the offense, as some patrons are getting quite crafty and, in the absence of ashtrays, are extinguishing their cigarettes in Altoid mint tins, which has been discovered by Health Department workers. Councillor Talley asked if the \$150 fine would be assessed five times if five people are smoking in an establishment, or if that would only be considered one violation. Councilwoman Tavares said that this would be considered one violation.

Councillor Oliver said that cigarettes contain elements that make it addictive, and now there are many entities that make it unlawful to smoke cigarettes. Theatres and airplanes have already banned smoking, but there are some who inadvertently light up out of force of habit. Some say that this is a criminalization of a lifestyle. Citing a business owner instead of the individual is a concern. There may be individuals who cause a disturbance when asked to refrain from smoking, and could chase other customers away as a result. This ordinance might hold proprietors hostage resulting in the removal of their license, even though they are trying to comply. He said that he completely understands the addiction, as he was once addicted; therefore, trying to make a customer comply could be quite difficult in some cases. Councilwoman Tavares said that the experience so far for Columbus has been very high compliance. The establishments in the community are complying with the law, as has been evident in the New York experience. She said that just as bar or restaurant owners have other regulations they must enforce, such as underage drinking, health standards, and not serving those who have had too much to drink, this will simply be an additional responsibility that goes along with the standards for receiving and keeping a food service or liquor license. She said that most business owners comply with whatever rules and regulations they are required to abide by as a condition of their license to operate. Most patrons, subsequently, comply with whatever conditions the establishment has with regards to service, such as "No shoes, no shirt, no service," which is not even a State law. If an establishment owner has a disregard for the law themselves, then they have given carte blanche to their patrons. She said that there has been overwhelming compliance and people have risen to expectations and the phone is not ringing off the hook with complaints. She said that there have been no incidents reported such as Councillor Oliver spoke about, but if a patron becomes belligerent or will not comply, law enforcement could be called, just as if any other regulation in the restaurant was being broken.

Councillor Bowes referred to Dr. Hyland's presentation regarding other jurisdictions that have passed some type of smoke-free ordinance, and the number of places that have made bars smoke-free is much smaller than the locations that have passed ordinances which only cover workplaces, restaurants and other public places. He asked why Columbus chose to include bars in their smoke-free ordinance. Councilwoman Tavares said that the whole motivation for this issue was to focus on the health issue for workers. She said that they felt that leaving out bars and not providing the same protection for those workers was discriminatory, valuing one group of workers over another. She said that some people choose to work in bars and restaurants for

convenience or because they have to work two jobs, and can only find part-time jobs in restaurants and bars with hours that do not conflict with their full-time jobs. She said that many are college students living off tips and working their way through college. She said that the Columbus City Council did not want to say that these persons' health was not as important as everyone else's. She said that the passed ordinance simply asks people to step outside. What they do to their own body is their responsibility, but when burning a cigarette impacts the health of others, that is when it is the government's responsibility.

Councillor Keller said that it may not be enough time to conduct a proper study, but he asked if in listening to bar and restaurant owners, what they are saying about increases or decreases in business. Councilwoman Tavares said that she is hearing both sides, some saying there is a slight increase, some that there is a decrease. She said that other cities adopting ordinances have shared that there is generally a dip in the first few months after the ordinance passage, but then a bounce back to a more positive level, with people coming into bars and restaurants that would not come before due to a smoky atmosphere.

Councillor Bradford said that the ordinance in the packet of information provided seems similar to the one before this Committee. He said that the ordinance passed by Columbus references a statement from the CDC that "between 38,000 and 62,000 non-smoking Americans die every day from exposure to second-hand smoke," and that "non-smoking workers chronically exposed to second-hand smoke are on the average of one-third or more likely to get lung cancer than those who are not exposed to it." He asked if there are any death certificates prior to the ordinance passage in Franklin County that refer to second-hand smoke as the cause of death. Councilwoman Tavares said that she has not checked with the Health Department and does not know the answer to that.

Councillor Bradford stated that he is very concerned with the 50-foot rule. In Broad Ripple, which is in his district, a person cannot go 50 feet without being at another bar or restaurant, and there would be nowhere for these people to go to smoke. Councilwoman Tavares said that Columbus did not pass the 50-foot rule, even though it was in the initial proposal. She said that the only regulations are that smoking cannot be done within the egress or ingress of a building or near a window or ventilation system. She said that this ordinance is an indoor ordinance and would not include outdoor public spaces such as sidewalks. Councillor Bradford asked how Columbus decided they could not discriminate between bars and restaurants, but yet could discriminate between private and public clubs. Councilwoman Tavares stated that these are private men's clubs for members only with no employees. She said that these establishments have D-4 liquor licenses and serve themselves, and therefore have no employees to be protected. Councillor Bradford said that this is different in the State of Indiana, and a bartender's permit is needed to serve alcohol and they could not serve themselves.

Councillor Bradford stated that he owns a restaurant located on the Monon Trail, that is basically a carry-out restaurant. Many of his patrons like to take their food out onto a deck behind the restaurant and eat. He said that without hiring additional help he cannot monitor those people outside on the deck while he is inside serving other customers. He said that he would then become responsible for these individuals smoking, when he has no means to control it. Issuing a citation to the business owner instead of the individual would also give the opportunity for an employee with a grudge to report incidents and complain in order to get back at an employer. He said that he continually finds cigarette butts on his deck or in the trash cans outside that have been left there after his restaurant is closed, and he has no control over this. Councilwoman Tavares said that the Columbus ordinance would not include an outdoor patio and would only cover the areas of the deck immediately outside an open window, a ventilation system outside vent, or at the entrance to the restaurant. Councillor Bradford stated that the Indianapolis proposal, as written, includes 50-foot restrictions from the building and would therefore include this deck area.

Chair Mansfield said that many have expressed a concern about letting businesses decide for themselves whether or not to allow smoking. Councilwoman Tavares said that the Columbus Council heard the same comments about a free marketplace and letting business owners dictate their own parameters as to how they do business and do what is in the best interest of their customers and employees. She said that she reminded her colleagues that before there were child labor laws, businesses decided how long children were going to work. If left up to the business community, society probably would have still had child labor for many years. There are other similar type issues, such as opening up establishments to every member of the public and not just to certain members of the population. Councilwoman Tavares said that this is why government has the responsibility to look out for the common good. Smoking cigarettes is still legal, and an individual can make their own decision as it relates to their own health. However, when it impacts the health and lives of others, then the government has a responsibility to protect those who do not smoke and have to work in establishments which allow smoking. She said that this is a public health and safety issue.

Councillor Bradford said that while he understands the impact on health of second-hand smoke, there could also be a situation in a restaurant where someone drinks too much at dinner and then might hurt or kill someone, either by a violent act or drunk driving incident because of excess drinking. Chair Mansfield said that this type of situation would be conjecture, and second-hand smoke has a direct and immediate impact, whereas this other situation is not a foregone outcome. Councillor Bradford asked if anyone can show him a death certificate in Marion County that lists the cause of death as second-hand smoke. Chair Mansfield said that she cannot. Councilwoman Tavares said that the federal government has indicated that approximately 53,000 people die of second-hand smoke annually. She said that anyone could talk to coroners and morticians across the country about what they have seen regarding deaths caused by second-hand smoke. The government cannot predict human behavior as the result of a

person drinking too much, but they can predict that if a person is around second-hand smoke for 20 minutes, their chemical make-up begins to change and their arteries begin to constrict. Studies predict that when a person is in a room with second-hand smoke for 30 minutes, it is as if they have smoked five cigarettes, even if they have not puffed on one cigarette. She said that penalties for those who are irresponsible drinkers is for another ordinance or legislative body to consider.

Councillor Oliver said that he used to smoke but gave it up for health reasons. He said that one of the things both his primary care doctor and cardiologist asked him was how old his parents were when they passed, and if they smoked, from what disease did they die. He said his father did smoke and died of cardiac arrest. A doctor does not ask the question as to whether or not a person is exposed to second-hand smoke, just if they are a smoker themselves. Yet unfortunately, some non-smokers work in an environment where the level of second-hand smoke is just as dangerous. He thanked Dr. Hyland and Councilwoman Tavares for coming and sharing their findings.

Councilwoman Tavares said that she is passionate about this issue because when her father suffered a massive stroke at the age of 38, the doctor told him to give up cigarettes if he wanted to see his children grow up. Her father never touched another cigarette and then died of a heart attack at the age of 48. She said that she knows her father lived another 10 years because he gave up cigarettes. She said that her husband, who is in his 40s, had a heart-attack in July, right after the smoke-free ordinance was passed. She said that both she and her husband have a history of heart disease in their family. While they cannot control their heredity and something they may be pre-disposed to, they can control the environment they are in and the way they eat. She said that she enjoys dancing and spent a lot of time doing so in her younger years. If she knew then what she knows today, how that second-hand smoke she was exposed to in those clubs, breathing it in heavily while dancing, was so dangerous to her health, she would not have spent so much time there. She said that she enjoys listening to jazz music, but most jazz clubs are smoky and hot, and she cannot enjoy something she truly loves doing because of the danger to her health. She said that she wants to do everything she can to prevent her premature death and that of her constituents, and that is why she wants to help others with this issue.

Chair Mansfield thanked both Dr. Hyland and Councilwoman Tavares for coming some distance and giving of their time to share with the Committee and the public here in Indianapolis about this very important issue.

PROPOSAL NO. 45, 2005 - amends the Code by establishing nonsmoking areas

Councillor Bowes stated that he is the Councillor for District 7 on the northwest side of Indianapolis. He said that it is his pleasure to present Proposal No. 45, 2005 along with his co-sponsors Chair Mansfield, Councillor Talley, Councillor Keller, and Councillor Patrice Abdullallah. He explained to the public how to find the actual proposal language on the Council website. He said that this proposal is designed to protect employees in

workplaces from the dangers of second-hand smoke. It prohibits smoking in workplaces, public places, restaurants and bars, and certain outdoor areas, which is an extension beyond what Columbus, Ohio has done. Those outdoor areas include the outdoor seating areas around restaurants and bars, sports arenas, and public parks. There is a list of exemptions that are not covered by this ordinance, such as private residences (unless the residence is used for a public use such as a day care), businesses that are family-owned and the public is not invited to enter (such as mail order), 20% of hotel rooms in Indianapolis, retail tobacco stores, residents in private or semi-private rooms in nursing homes (as long as other occupants give written permission), and vehicles used for work that carry no other passengers. Councillor Bowes said that he received an e-mail this week that goes back to the idea shared by Councillor Oliver about criminalization of an addiction or lifestyle. He said that the e-mail asked why, in light of all the jail overcrowding that is already prevalent, would the Council create another crime. He said that this proposal does not create a crime, but rather an ordinance violation that results in a fine.

Councillor Bowes added that with regards to enforceability, any law enforcement officer can issue a ticket for any ordinance violation. Such violations are usually settled out of court, but could end up before the City prosecutor and City legal. Other zoning, building code, fire and other inspectors who are a part of City government already perform inspections, as well. This ordinance authorizes those same inspectors to issue citations for violations with regards to this added ordinance. He said that the proposal also allows for private citizens to issue a complaint, possibly with a hotline similar to the Mayor's Action Center (MAC). He said that there is a relationship with the Health Department in addressing this issue, but not to the extent that the Council is telling them how to enforce the issue. The Health Department, however, supports the smoke-free regulations and would probably be willing to help with enforcement, even though the Council cannot legally require them to do so. Councillor Bowes stated that the first violation would result in a \$100 fine, which the violator could mail. If the individual or business owner wishes to challenge the violation, they could then take it to court, just as a person could challenge a parking ticket or other ordinance violation. The second violation in a calendar year would result in a minimum penalty of \$200, with a maximum penalty of any City ordinance violation at \$2,500. The ordinance also states that those organizations that commit violations and are issued a license by local government could be in jeopardy of their license being revoked or not renewed if they do not comply. This adds another incentive to abide by the law in order to be granted the privileges the government allows. Councillor Bowes stated that he has served as a pro tem judge in Environmental Court, and his experience was that inspectors went out of their way to promote voluntary compliance, and an ordinance violation case would not show up in court until all avenues of voluntary compliance had been exhausted. He said that he fully expects this ordinance will be handled the same way, and upon the first contact believes most individuals and businesses will comply. He said that he does not expect any added police or inspectors will be needed.

Councillor Bowes said that second-hand smoke is the third leading cause of preventable death. Studies have shown that Marion County loses 250 people to second-hand smoke each year. Another study shows that in 2002, Marion County spent \$16.7 million to treat illnesses and disease caused by second-hand smoke. He said that he believes it is the Council's duty to protect their fellow citizens, and this is the motivation for offering the proposal. He hopes the Committee will take a long look at this issue, listening to input from the community, and understanding that the proposal is the right thing to do.

Chair Mansfield said that because several hearings are scheduled on this issue to garner maximum public input, she would entertain a motion to postpone action on the proposal.

Councillor Talley moved, seconded by Councillor Oliver, to "Postpone" Proposal No. 45, 2004 until March 10, 2005. The motion carried by a vote of 7-0.

Councillor Bradford asked Councillor Bowes what the first and second leading causes of preventable death are. Councillor Bowes stated that the first cause is first-hand smoking, and the second cause deals with nutrition, such as obesity and other eating disorders. Councillor Bradford asked if the Committee is then going to address these issues also. Councillor Bowes said that the first two causes are a personal choice and only affect the individual engaging in the activity. Second-hand smoke extends that health hazard to the people around the smoker. He said that an individual eating unhealthy foods does not make another person eat unhealthy foods. Councillor Bradford said that it could potentially have this effect in a situation where a parent is feeding a child food that is unhealthy.

Councillor Talley suggested that at the March 10th meeting, the Committee could possibly decide a future date to end debate and take a final vote for recommendation to the full Council instead of postponing the proposal to each meeting. He said that this would avoid the appearance that the Committee might take a final vote at each meeting. Chair Mansfield agreed that this is a good suggestion and said that she will look at the schedule to consider feasible dates for a vote.

There being no further business, and upon motion duly made, the meeting was adjourned at 7:49 p.m.

Respectfully Submitted,

Angela Mansfield, Chair